*THE HON'BLE SRI JUSTICE C.V. NAGARJUNA REDDY

+WRIT PETITION No.27280 of 2005

% Dated 26-11-2007

B. Venkataramana.

Petitioner

VERSUS

$ The Commissioner of Prohibition and Excise,
Andhra Pradesh, Hyderabad & others.

Respondents

! Counsel for the Petitioner: Mr. A. Jagannatha Rao.

^Counsel for the Respondents: Government Pleader for Prohibition and Excise

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> HEAD NOTE:

? Cases referred

1. 2001 (6) ALT 240 (FB)
2. AIR 1954 SC 220
3. AIR 1957 SC 414
4. AIR 1958 SC 398
5. (1975) 1 SCC 737
6. (1995) 1 SCC 574
7. (1986) 4 SCC 566
8. (2006) 4 SCC 327

HON'BLE SRI JUSTICE C.V.NAGARJUNA REDDY

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Between:
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AND

The Commissioner of Prohibition and Excise,
Andhra Pradesh, Hyderabad.

And others.

..... Respo

Counsel for the petitioner : Sri A.Jagannatha Rao

Counsel for the respondents : G.P. for Prohibition & Excise

HON'BLE SRI JUSTICE C.V.NAGARJUNA REDDY

WRIT PETITION No.27280 of 2005

O R D E R:

The petitioner, who was the licencee to sell Indian Liquor and Foreign Liquor (IL & FL) by shop in respect of Shop No.2, Ward No.2 of Madhira Village, Khammam district for the period from 1.7.2005 to 30.6.2006, filed the present writ petition for a writ of mandamus to declare the action of respondents in collecting licence fee for the period from 1.7.2005 to 30.11.2005 as illegal. He also sought for a consequential direction to refund the licence fee paid for the said period.

The undisputed facts are stated as under:

Respondent No.2 issued notification, published in Khammam District Gazette No.19 of 2005 dated 26.5.2005 calling for tenders for grant of lease of right to sell IL & FL by shop under Rule 5 of the Andhra Pradesh Excise (Lease of Right of Selling by Shop and Conditions of License) Rules 2005 (for short "the Rules"). The petitioner filed his tender for shop No.2, Ward No.2 of Madhira village and he became the highest bidder in the auction conducted on 2.6.2005, having offered a sum of Rs.7,00,999/- as annual lease fees. The petitioner remitted 1/3rd of the lease amount by 2.6.2005 as required under the tender conditions and furnished bank guarantee for Rs.4,67,000/- representing 2/3rd of the lease amount on 11.6.2005. Condition No.XXIII of the tender conditions stipulates that the successful auction purchaser after fulfilling the formalities under Rules 18,19, and 22 and before obtaining licence shall select suitable premises for sale of IL & FL inconformity with Rule 27 and obtain a licence in Form-A4 from the Prohibition and Excise Superintendent to commence business from 1.7.2005. The petitioner

submitted his application to respondent No.3 on 2.6.2005 to approve premises bearing Door No.1-198 of Madhira village for locating his shop. As no approval was received by the petitioner before the date of commencement of the excise year, i.e., 1.7.2005, the petitioner approached respondent No.1 on 5.7.2005, but in vain. Therefore, he filed W.P.no.14987 of 2005 in this Court which came to be disposed of on 19.7.2005 with the direction that respondent No.1 shall consider representation dated 5.7.2005 filed by the petitioner for approving the premises bearing Door No.1-198 within a period of one month from the date of receipt of a copy of the order. However, four and half months after disposal of the writ petition, respondent No.3 granted licence on 2.12.2005 permitting the petitioner to open the shop at the same premises which was proposed by the petitioner in his application dated 2.6.2005. A counterpart agreement was entered into on 2.12.2005 and even before the grant of licence and execution of counterpart agreement, the second installment of licence fee was recovered by invoking the bank guarantee on 1.10.2005. The petitioner filed the present writ petition on 21.12.2005 and this Court while ordering notice passed an order in W.P.M.P.No.35045 of 2005 filed for restraining the respondents from invoking the bank guarantee, directing that furnishing of any bank guarantee towards payment of licence fee prior to the granting of licence will be subject to further orders.

The Prohibition and Excise Inspector, Madhira filed counter affidavit and it is evident from the averments contained therein that the last installment of licence amount was collected from the petitioner on 31.12.2005. In the counter affidavit it is admitted that the petitioner was the successful bidder in respect of Shop No.2, Ward No.2 of Madhira Gram Panchayat for the lease period from 1.7.2005 to 30.6.2006 and the fact that the petitioner paid 1/3rd of the lease amount and furnished bank guarantee for the balance lease amounts is also admitted. The fact that the petitioner applied for grant of licence for running the shop in premises bearing Door No.1-198 of Madhira Gram Panchayat is also admitted. It is

however averred in the counter affidavit that the said premises was falling in ward No.1 as per certificate dated 10.6.2005 issued by the Secretary, Madhira Gram Panchayat and that selection of the said premises is also not in conformity with the location/area notified in Khammam district gazette No.19/2005 dated 26.5.2005 besides not being in accordance with Rule-27 of the Rules. It is further averred that notice dated 5.7.2005 was issued to the petitioner to select the premises in Ward No.2, that as the petitioner failed to select such a premises, another notice was issued to him on 13.7.2005 and that instead of selecting a premises in Ward No.2, the petitioner filed representation dated 5.7.2005 to respondent No.1 to direct respondent No.3 to grant licence for premises bearing No.1-198 in accordance with certificate dated 29.6.2005 issued by the Secretary, Madhira Gram Panchayat. It was also admitted in the counter affidavit that this Court in W.P.No.14987 of 2005 directed respondent No.1 to consider the petitioner's representation dated 5.7.2005. It is further stated that on the instructions issued by respondent No.1, the Deputy Commissioner of Prohibition and Excise, Warangal Division instructed the Prohibition and Excise Superintendent, Khammam to seek clarification from the District Panchayat Officer, Khammam on the contradictory certificates issued by the Secretary, Madhira Gram Panchayat, that the District Panchayat Officer, Khammam vide his proceedings dated 5.9.2005 appointed Divisional Panchayat Officer, Khammam to enquire into the matter and verify whether Door No.1-198 falls in Ward No.1 or Ward No.2, that the Divisional Panchayat Officer, Khammam in his enquiry report dated 26.9.2005 stated that Door No.1-198 falls in Ward No.2 and that based on the said enquiry report, the District Panchayat Officer vide his proceedings dated 5.10.2005 which was addressed to respondent No.3 stated that Door No.1-198 falls in Ward No.2 as per the ward area. It is further averred that respondent No.3 through his letter dated 14.10.2005 brought the said report to the notice of the Deputy Commissioner of Prohibition and Excise, Warangal Division, who in turn requested respondent No.1 through his letter dated

17.10.2005 to issue necessary instructions and that respondent No.1 through his letter dated 15.11.2005 requested the District Collector, Khammam to sort out the issue and the District Collector, Khammam in turn instructed the Joint Collector, Khammam to convene a meeting of District Panchayat Officer, Khammam and Prohibition and Excise Superintendent, Khammam and decide the matter on merits. It is further revealed from the counter affidavit that a joint meeting was held by the Joint Collector on 21.11.2005 in which the District Panchayat Officer, Khammam stated that as per the Panchayat Raj Act and Rules Ward means territorial jurisdiction of elected ward member and therefore, premises bearing Door No.1-198 falls in Ward No.2 and that Secretary, Madhira Gram Panchayat issued an erroneous certificate that the said premises falls in Ward No.1. The District Collector, therefore instructed respondent No.3 to take necessary action and accordingly the latter granted licence to the petitioner to run the retail shop in premises bearing Door No.1-198. It is also mentioned in the counter affidavit that the petitioner signed counterpart agreement on 2.12.2005 agreeing to pay the entire lease amount with effect from 1.12.2005 and also gave an undertaking that he will not claim the refund of proportionate lease amount for the period from 1.7.2005 till the grant of licence. It is further stated that the petitioner is liable to pay the entire lease amount as per Rule19 of the Rules. In para-6 it is mentioned that tenderors have to select the premises under Rule 27 and that accordingly the tenderor has complied with the conditions and that licence was granted on 30.6.2005. (This averment on the face of it is wrong because it is the admitted position that licence was actually granted only on 2.12.2005). In the counter affidavit the respondents have taken the stand that as held by the Supreme Court, no person dealing in business of intoxicant can claim protection under Article 19 of the Constitution of India and that since the lease period is for 12 months and having entered into agreement undertaking to pay the licence fee for the entire lease period, the petitioner is not entitled to claim refund. It is also averred that the

petitioner gave an undertaking to the effect that he will not claim refund of proportionate lease amount for the period from 1.7.2005.

Sri A.Jagannadha Rao, learned counsel for the petitioner submitted that while the excise year was to commence from 1.7.2005, at the right earnest, the petitioner made his application for grant of licence after selecting a premises in Ward No.2 and that respondent No.3 evidently under the pressure exerted by Sri Vasireddy Ravindranath, who was the successful bidder for Ward No.1 delayed grant of licence in favour of the petitioner for Ward No.2 on the purported certificate issued by the Secretary, Madhira Gram Panchayat. He further submitted that the very fact that the premises chosen by the petitioner was eventually approved by respondent almost six months after he applied for licence shows that the entire fault lay with the respondents in granting licence and that therefore, the petitioner cannot be saddled with the liability towards licence fees for the period during which he was not permitted to run the business.

Opposing the contentions of the learned counsel for the petitioner, the learned Government Pleader for Prohibition and Excise stated that in view of the two contradictory certificates issued by the Secretary, Madhira Gram Panchayat delay occurred in the grant of licence and that the said delay not being deliberate, the petitioner is not entitled to remission of licence fee.

Having regard to the pleadings as reinforced by the respective contentions of the learned counsel for the parties, the points that arise for consideration in the writ petition are as follows:

1. Who among the petitioner and the respondents are responsible for the delayed grant of licence?
2. If the answer to point No.1 is in favour of the petitioner, whether he is entitled to refund of the proportionate licence fee/lease amount for the period from 1.7.2005 to 30.11.2005?

Before dealing with the points framed above, it may be necessary

to notice some of the relevant provisions of the Andhra Pradesh Excise Act 1968 (for short “the Act”).

Section 2(9) defines excisable article as any alcoholic liquor for human consumption; or any intoxicating drug. Sub-section (1) of Section 15 inter alia prohibits sale or buying of excisable articles except under the authority and in accordance with the terms and conditions of a licence granted in this behalf. Sub-section (2) of Section 15 authorises Prohibition and Excise Superintendent to grant the licence if the sale or buying is within a district. Under Section 17, the State Government is empowered to grant for a fixed period to any person at any place a lease or licence or both for the exclusive privilege of selling by wholesale or retail any liquor or any intoxicant. Under Section 20, the District Magistrate may by notice in writing to the licencee require that any shop in which any intoxicant sold shall be closed for such time or for such period as he may think necessary for preservation of public peace. Under sub-section (3) of Section 20 the licencee on account of such closure shall not be entitled to any compensation except to the refund of such licence fee paid by him in respect of shop as is proportionate to the period in which the shop is required to be kept closed. Under Section 23, the Commissioner or any other competent officer may accept payment of a sum in consideration of grant of lease or licence or both for the exclusive privilege in respect of liquor or any other intoxicant under Section 17, instead of or in addition to any excise duty or fee leviable under Sections 21 and 22. Under Section 29, the licencing authority is empowered to require the licencee to execute a counterpart agreement in conformity with the tenor of his licence. Under Section 31(1) the licencing authority is empowered to cancel or suspend the licence for various reasons enumerated in clauses (a) to (e) which include non-payment of duty and breach by the holder of licence of any of the terms and conditions thereof, etc. Section 31(3) provides that on cancellation of licence the licencee shall not be entitled to compensation for cancellation or refund of any fee paid or deposit made in respect thereof. Section

32(1) empowers the licencing authority to withdraw the licence for any cause other than that specified in Section 31. Sub-section (2) of Section 32 mandates that on such withdrawal, the licencee is entitled to refund of licence fee proportionate for the un-expired portion of the term of the licence and the deposit made by the licencee. Under Section 33, a licencee is entitled to surrender his licence on the expiration of one month's notice, but he is not entitled to refund of fee proportionate to unexpired portion of the licence fee. Section 72 empowers the Government to make rules for the purposes which inter alia include regulation of wholesale or retail sale or buying of any intoxicant under licences.

The State Government in excise of the powers conferred under Section 72 read with Section 17(2) and 29 of the Act framed the Rules. Rule 2(l) of the Rule define lease amount as the amount payable in respect of shop as part of sum in consideration of the grant of lease payable under Section 23 read with Section 17 of the Act. Rule 2(m) defines the lease period as the actual lease period in the lease year or part thereof; Rule 2(n) defines lease year as the period of 12 months commencing from 1st July of the year and ending with 30th June of the succeeding year and Rule 2(p) defines licenced premises as the premises where IL & FL is permitted to be sold by the leaseholder. Rule 3 provides that lease of right to sell IL & FL shall ordinarily be granted by inviting sealed tenders from the public after due notification. Under Rule 5, where lease for sale of IL & FL by shop is proposed to be granted, a notice of the proposed auction shall be issued and the auction notice shall inter alia contain serial number and the name of the area/locality where the shop will be established. Under Rule 17, the successful auction purchaser shall obtain licence in Form A4 after fulfilling the required formalities and subject to rules in respect of the premises where a shop will be located. Under Rule 22, after tendering the deposit and advance amount as required under Rule 18, the lessor and the auction purchaser shall enter into a counterpart agreement in conformity with the tenor of

the lease in Form A4 on the stamp paper of the requisite value as per the provisions of the Indian Stamp Act 1899 before taking out a licence for the sale of IL & FL and such counterpart agreement shall come into force with effect from 1st July of the year to which the auction relates in respect of the leases auctioned on or before 30th June and in case where the auction took place on or after the 1st July, the counterpart agreement shall come into force from the date of auction. Rule 23 envisages that lease for the sale of IL & FL granted to the auction purchaser shall not take effect until he obtains a licence from the Prohibition and Excise Superintendent and it shall be the responsibility of the auction purchaser to execute the counterpart agreement referred to in Rule 22 and also complete other formalities contemplated under Rules 17, 18, and 19 within the time specified and obtain the licence in respect thereof. The Rule further envisages that if the acution purchaser fails to do so, the lease shall stand cancelled. Under Rule 25, every lease shall ordinarily be valid for one year commencing from 1st July and ending with 30th June of the succeeding year. Under the first proviso to the said Rule, the lease granted after the 1st July shall be valid upto to the end of 30th June of the succeeding year and under the second proviso a lease granted for a part of the lease year shall be valid for such period as may be specified by the auctioning authority. Under Rule 27, the successful tenderer, subject to the approval of the Prohibition and Excise Superintendent shall select suitable premises for sale of IL & FL within the municipal Corporation, municipality, village/town/city or area/locality as the case may be as notified in the District gazette, subject to the restrictions stipulated in clauses (a) to (d) thereof. Rule 59 prescribes that leaseholder shall not be entitled to remission of lease amount or compensation on account of closure of licenced premises when the same is ordered to be closed under Section 20 of the Act.

Point No.1:

On being directed, the learned Government Pleader produced the

file and a careful perusal of the record reveals as under:

Page-1 of the file contains the acceptance of the petitioner's tender in respect of shop mentioned at Sl.No.39 of the Khammam district gazette dated 26.5.2005. The next document in the file is representation dated 14.6.2005 made by Sri Vasireddy Ravindranath addressed to respondent No.3 wherein he mentioned that there was severe competition for shop notified for Ward No.1 at Sl.No.38 in the gazette and he offered the highest bid amount of Rs.16,15,678/- mainly because of its locational advantage. He mentioned in the said representation that the successful bidder for Ward No.2 (obviously referable to the petitioner) is seriously trying through lower departmental staff to locate his shop in Ward No.1 by relying on election ward. He therefore requested to keep the same in mind and see that no injustice is done to him. On the reverse of the said representation, a certificate in vernacular language issued in the name of Secretary, Madhira Gram Panchayat and addressed to Sri Vasireddy Ravindranath was found wherein it is inter alia mentioned that several colonies with Door Nos.1-1 to 1-960 fall under Ward No.1. The next document found in the file is a similar representation dated 29.6.2005 wherein the said Vasireddy Ravindranath referred to the petitioner's name and stated that Door No.1-198 is shown by the petitioner as located in Ward No.2, and that if he is permitted to locate his shop at the said premises, he will suffer heavy financial loss. The file contains another certificate dated 29.6.2005 issued in the name of Secretary, Madhira Gram Panchayat certifying that Door No.1-198 falls in Ward No.1. This certificate is also shown to have been addressed to Sri Vasireddy Ravindranath. Respondent No.3 addressed letter dated 2.7.2005 to respondent No.1 wherein it is mentioned that four shops were notified for Madhira town in respect of four wards, namely, Ward Nos.1, 2, 9 and 12, that licences were already granted for shops 1, 3 and 4 which were notified "as per the revenue wards" furnished by the Secretary, Madhira Gram Panchayat, that the petitioner selected a premises falling in Ward No.1 as per the particulars furnished by the Secretary of Madhira Gram

Panchayat, that the petitioner is insisting to grant the licence at the premises falling in Ward No.1 by stating that the same falls in Ward No.2 as per the election wards and that since they have already issued three licences based on the revenue wards furnished by the Secretary of Madhira Gram Panchyayat, the petitioner's request has been declined with a suggestion to select premises falling in Ward No.2 as per the revenue wards furnished by the Secretary of Madhira Gram Panchayat. Respondent No.3 concluded in the said letter that the request of the petitioner for grant of licence in the shop proposed by him does not deserve any consideration. The file contains certificate dated 29.6.2005 issued in the name of the Secretary, Madhira Gram Panchayat which is addressed to Circle Inspector of Excise, Madhira and it is stated therein that the Gram Panchayat of Madhira is divided into 18 wards for administrative purposes and into 12 wards for revenue purpose and that as per the voters' list Ward No.1 comprises house Nos.1-1 to 1-176 and Ward No.2 comprises house Nos.1-177 to 1-345 (the premises selected by the petitioner bears door No.1-198 which falls in Ward No.2 as per this certificate).

Acting on the letter dated 4.7.2005 addressed by the Station House Officer, Madhira, respondent No.3 gave notice dated 5.7.2005 to the petitioner that even after lapse of one month from the date of auction, the petitioner failed to select a premises and establish shop in Ward No.2 of Madhira village and he therefore, directed the petitioner to select the premises in Ward No.2 and submit proposal for grant of licence forthwith failing which action will be taken as per the Rules. On 8.7.2005, respondent No.3 addressed letter to the District Panchayat Officer, Khammam. A perusal of the subject and reference contained in the said letter shows that the District Collector through his endorsement ordered enquiry into the certificates issued by the Secretary, Madhira Gram Panchayat and with reference to the same respondent No.3 requested the District Panchayat Officer, Khammam to enquire into the matter relating to issue of certificates indicating revenue wards once and election wards

later leading to the litigation over establishment of shop in Ward No.2 of Madhira Gram Panchayat. A few days later, i.e., on 13.7.2005, respondent No.3 issued another notice calling upon the petitioner to explain the reasons why 1/3rd licence fee paid in cash and 2/3rd licence fee given in the shape of bank guarantee should not be forfeited to the Government treasury within seven days from the date of receipt of the notice, that failing which it will be construed that the petitioner has no explanation in his defence to offer and that his selection for shop No.2 will be cancelled and the shop will be re-notified afresh duly forfeiting deposits. This notice evidently forced the petitioner to approach this Court by filing W.P.No.14987 of 2005 which, as already noted, was disposed of on 19.7.2005. As respondent No.3 was left with no other option, he again addressed letter dated 22.7.2005 wherein he referred to the two conflicting certificates issued by the Secretary, Madhira Gram Panchayat. It is however, interesting to extract the sentence added by respondent No.3 in handwriting which reads "we have mentioned the wards in gov.notification to indicate a particular territorial demarcation of each licence". While requesting the District Panchayat Officer, Khammam to initiate action against the Secretary, Madhira Gram Panchayat for giving contradictory certificates, he requested him to furnish the criterion usually adopted for creation of wards in a gram panchayat so as to apprise the position to the Commissioner of Prohibition and Excise, Andhra Pradesh, Hyderabad.

Respondent No.3 addressed letter dated 5.8.2005 to the Deputy Commissioner of Prohibition and Excise, Warangal Division wherein while informing the latter that by the issue of second certificate the Panchayat Secretary gave scope for litigation, he reiterated his stand that the petitioner's application for permission to establish shop at Door No.1-198 was not considered and he was directed to establish the premises in Ward No.2. In response to the said letter, the Deputy Commissioner directed respondent No.3 to obtain specific clarification from the District Panchayat Officer, Khammam as to in which ward Door No.1-198 actually

falls. Respondent No.3 in turn addressed letter dated 1.9.2005 to the District Panchayat Officer, Khammam seeking clarification as required by the Deputy Commissioner of Prohibition and Excise, Warangal. Meanwhile through his letter dated 1.10.2005 addressed to the Manager, State Bank of Hyderabad, Madhira Branch, respondent No.3 invoked bank guarantee recovering second installment of licence fee of Rs.2,34,000/-.

The District Panchayat Officer, Khammam vide his letter dated 5.10.2005 addressed to respondent No.3 informed him that the Divisional Panchayat Officer enquired into the matter on 16.9.2005 and submitted his report on 26.9.2005 according to which house No.1-198 falls in Ward No.2, taking the division made on territorial basis for election wards as the criterion. Following the said letter, the Deputy Commissioner of Prohibition and Excise, Warangal Divisional directed respondent No.3 to take necessary action as per the communication dated 5.10.2005 issued by the District Panchayat Officer, Khammam and sort out the issue. Despite the said communication, respondent No.3 instead of issuing the licence wrote back to the Deputy Commissioner in his letter dated 14.10.2005 stating that since licences for shop Nos.1,3 and 4 were issued based on the certificates issued by the Secretary, Madhira Gram Panchayat, issue of licence to shop No.2 relying upon the report of the Divisional Panchayat Officer, Khammam may invite further litigation and that since the petitioner questioned his order earlier, the Deputy Commissioner himself may take appropriate decision. On receipt of the said communication, the Deputy Commissioner sent letter dated 31.10.2005 wherein it is stated that his inspection of Madhira on 30.10.2005 revealed that there were 960 house numbers in Ward No.1, that the ward division is made on territorial basis for election of ward members, that Ward No.1 is divided into six wards as indicated in the certificate dated 29.6.2005 issued by the Secretary, Madhira Gram Panchayat and that petitioner sought to take advantage of the said certificate in which house No.1-198 was shown to be falling in Ward No.2

instead of original Ward No.1. It is further stated that the division of said ward into six wards was made only for the purpose of election of ward members and that the same cannot be construed to be Ward No.2 for issue of A4 licence. The Deputy Commissioner opined that to fall in Ward No.2 house numbers should begin with '2' followed by house number and that house No.1-198, which was selected by the petitioner proves that the said premises falls in Ward No.1. Respondent No.1 addressed letter dated 15.11.2005 to respondent No.2 to sort out the issue in the light of the report dated 5.10.2005 sent by the District Panchayat Officer, Khammam. Eventually on 2.12.2005 respondent No.3 directed the Station House Officer, Prohibition and Excise Station, Madhira to verify premises bearing house No.1-198 with reference to the rule and certify the suitability of the premises in view of the District Collector's endorsement to grant licence at the said premises. On the same day, the Station House officer gave his report by approving the premises and a formal counterpart agreement was entered into on the same day, i.e., on 2.12.2005. The record also contains a document which appears to be a xerox copy of purported undertaking containing the signatures of the petitioner to the effect that he will not claim refund of proportionate licence fee from 1.7.2005 to 30.11.2005 during which period licence was not issued and that the said undertaking is given at his "wish and pleasure without any pressure".

It is quite interesting to notice from the record that Sri Vasireddy Ravindranath, licencee for Ward No.1, acting on whose representation respondent No.3 declined to grant licence to the petitioner, filed W.P.No.26600 of 2005 questioning the action of respondent No.3 in granting licence to the petitioner to run his shop in premises bearing No.1-198. The said writ petition was dismissed by this Court by order dated 28.2.2006 and Writ Appeal No.264 of 2006 filed by him against the said order was dismissed by a Division Bench of this Court by order dated 14.3.2006. The Division Bench gave a categorical finding that the notification issued by the Collector and District Magistrate, Khammam for

auction of the shops did not contemplate grant of licence as per the revenue ward and that therefore, consideration of elective ward as the criterion for grant of licence to the petitioner herein cannot be termed as illegal and violative of Article 14 of the Constitution of India.

A copious reference to the documents contained in the record was made hereinabove by me in order to know whether the petitioner was at fault in selecting a suitable premises falling in Ward No.2 and whether respondent No.3 acted bona fide in considering the petitioner's request to approve the premises selected by him. From the conspectus of events discussed above, it is clear beyond any pale of doubt that respondent No.3 was completely guided by certificate dated 10.6.2005 obtained and produced by Sri Vasireddy Ravindranath showing that the premises selected by the petitioner fell in Ward No.1. The repeated assertions made by respondent No.3 in his correspondence with his higher officials as discussed in detail above show that it is the said certificate on the basis of which he granted licences in respect of shop numbers 1,3 and 4. Though it is not clear from the record as to when licences for shop numbers 1,3 and 4 were issued, when the petitioner produced certificate dated 29.6.2005 addressed to the Circle Inspector of Excise, Madhira wherein he had clearly mentioned that while for the purpose of revenue Madhira Gram Panchayat was divided into 12 wards, for administrative purposes, it was divided into 18 wards and that house No.1-198 falls in Ward No.2, respondent No.3 failed to take immediate steps to get the issue resolved. Instead, he stuck to his stand that the petitioner shall select another premises. The unfair conduct of respondent No.3 could be seen from the fact that while requesting the District Panchayat Officer to take action against the Secretary, Madhira Gram Panchayat in issuing contradictory certificates vide his letter dated 8.7.2005, he has not made any request to the said authority to clarify as to which of the two certificates is correct. On the other hand, he started mounting pressure on the petitioner to select another premises by issuing notice dated 13.7.2005 in which he called upon the petitioner to explain the reasons as

to why the licence fee should not be forfeited and his selection shall not be cancelled. But for the timely interference by this Court in W.P.No.14987 of 2005, he would have probably gone ahead with the forfeiture of deposit and licence fee. At least, after the District Panchayat Officer sent the report to him and the Deputy Commissioner of Prohibition and Excise forwarded a copy of the said report of the District Panchayat Officer vide his proceedings dated 6.10.2005 directing him to take necessary action on the said report, he has not placed a quietus on the issue by granting licence and again by writing letter dated 14.10.2005 to the Deputy Commissioner of Prohibition and Excise to resolve the issue at his end respondent No.3 successfully managed to see that the issue hangs fire and the stalemate continues. Till respondent No.1 intervened and sought the help of respondent No.2 in resolving the issue, respondent No.3 did not make any effort on his own to end the impasse created by him. It is only with endorsement dated 2.11.2005 made by respondent No.2 that the petitioner's prolonged agony ended on 2.11.2005.

It is indeed difficult to comprehend that respondent No.3 being the authority empowered to grant licences was ignorant of the general criterion on the basis of which wards are divided and the licences are granted. While referring to the record, in the earlier part of this judgment, I made a reference to letter dated 22.7.2005 addressed by respondent No.3 to the District Panchayat Officer, in which he had written in handwriting that they have mentioned in the auction notification, the wards to indicate a particular territorial demarcation of each licencee. A perusal of the list of the shops notified in the Khammam District Gazette shows that except mentioning ward numbers under column 'area/locality' no separate territorial demarcation of each licencee has been made. However, the Division Bench in its order dated 14.3.2006 passed in Writ Appeal No.264 of 2006 held as under:

> " Notification issued by the Collector and District Magistrate, Khammam for auction of shops did not contemplate grant of licence as per the revenue ward. Therefore, the consideration of the elective ward as the

criterion for grant of licence to respondent No.4 cannot be termed as illegal or violative of Article 14 of the Constitution of India."

This finding of the Division Bench clearly demonstrates that the stand which respondent No.3 was maintaining all through that licences were required to be granted as per the revenue wards was a mere smoke screen to prevent the petitioner from operating his shop in the premises proposed by him and the same is contrary to the criterion of elective wards being followed by the excise department.

From the discussion undertaken above, I have absolutely no manner of doubt to conclude that the petitioner is made a victim of trade rivalry. If respondent No.3 had acted in a fair and transparent manner he would have got the issue resolved by approaching respondent No.2 at the earliest point of time. Ultimately, with certificate dated 10.6.2005 procured by Sri Vasireddy Ravindranath and acted upon by respondent No.3 to deny licence to the petitioner being found to be incorrect, respondent No.3 was hoist with his own petard and the petitioner stood vindicated with the final approval of the premises selected by him.

These facts thus clinchingly establish that the petitioner is not at all responsible and the responsibility squarely lay on respondent No.3 for the inordinate delay in the grant of licence. This point is answered accordingly.

Re-Point No.2:

In the counter affidavit filed on behalf of the respondents, it is mainly averred that the petitioner who is involved in the business of intoxicants has no fundamental right to carry on the business and therefore, he is not protected by the provisions of Article 19(1)(e) of the Constitution of India, that under Rule 25 of the Rules, the lease period is valid for one year commencing from 1.7.2005 to 30.6.2006, that once the tenderer entered into agreement, the operation of the contract will come into operation as held by the Full Bench of this Court in **Sri Narsimha Wines and Others Vs. Prohibition and Excise Superintendent,**

Medak District[1]. It is further averred that the petitioner in the counterpart agreement executed by him agreed to pay a sum of Rs.7,00,999/- being the licence fee for the period from 1.7.2005 to 30.6.2006.

The proposition that a citizen has no fundamental right to carry on business in intoxicants is too well settled by a number of constitution bench judgments, some of which are **Cooverjee Vs. Excise Commissioner, Ajmer**[2], **State of Assam Vs. Sristikar**[3], **Nagendranath Bora Vs. Commissioner of Hills Division**[4], **Har Shankar Vs. Dy.Excise Commissioner**[5] and **Khoday Distilleries Ltd., Vs. State of Karnataka**[6].

But in the context of the relief claimed by the petitioner for refund of the proportionate licence fee for the period during which he was prevented from carrying on business, reliance placed by the respondents on the aforementioned proposition is wholly misplaced. I n **Khoday Distilleries (8 supra)**, the Constitution Bench while summarizing the law on the issue whether the right to carry on business in intoxicants is a fundamental right or not and holding that a citizen is not entitled to carry on trade or business in activities which are obnoxious and injurious to health, held that such a business is *res extra commercium* (outside commerce). However in sub-para (g) of para-60 it held that when the State permits trade or business in potable liquor with or without limitation, the citizen has a right to carry on trade or business subject to the limitations, if any, and it cannot make discrimination between the citizens who are qualified to carry on the trade or business.

I n **State of Madhya Pradesh Vs. Nandlal Jaiswal**[7] the Supreme Court held that when the State decides to grant the right or privilege to its citizens to deal in intoxicants, it cannot escape the rigour of Article 14 and that it cannot act arbitrarily or at its sweet will. The Supreme Court conclusively rejected the argument that Article 14 can have no application in a case where licence to manufacture or sell liquor

is granted by the State Government.

In **Kerala Samsthana Chethu Thozhilali Union Vs. State of Kerala**[8] the Supreme Court while repelling the contention that a party conducting business in intoxicant cannot question the validity of conditions, held that the State while parting with its exclusive privilege cannot take recourse to the doctrine "take it or leave it" having regard to the equality clause enshrined under Article 14 of the Constitution and that the State in its dealings must act fairly and reasonably. It was further held that the bargaining power of the State does not entitle it to impose any conditions as it desires.

The Full Bench decision in **Sri Narsimha Wines (1 supra)** has no bearing on the facts of the present case because in the said case, the tenderer voluntarily participated in the tender process being aware of the fact that the licence period was only from 17.5.2000 to 31.3.2001 and the Court repelled the contention of the licencee that the rule which provided for payment of the licence fee for 12 months was illegal. Therefore, the said judgment has no application to the facts of the present case.

In view of above settled legal position it does not lie in the mouth of the respondents to plead that even if their action smacks of arbitrariness, a citizen cannot seek redressal of the injustice merely because he is carrying on trade in liquor. Such an unwholesome stand, in my considered opinion, is destructive of the concept of rule of law. When once the State permits its citizens to enter in the business of intoxicants, it is bound to act in a fair, transparent and reasonable manner while dealing with its citizens.

From the analysis of various provisions, which were discussed in the foregoing, it is clear that while no person can carry on the business in liquor without a licence and payment of licence fee, privilege fee etc., it cannot be denied that permission to run the business is the quid pro quo for payment of fees. Indeed this principle is reflected in at least two of the provisions of the Act namely, sub-section (3) of Section 20 and sub-section (2) of Section 32 which were referred to hereinbefore. Under the

former provision where the licencee is directed to close the shop, he is entitled to the refund of the proportionate licence fee for the period during which the shop is closed and under the latter provision, in case of withdrawal of the licence for reasons other than those enumerated in Section 31, the licencee is entitled to refund of proportionate licence fee for the unexpired portion of the term of the licence and the deposit made by him. Of course, Rule 59 of the Rules sought to deny remission of the licence fee if the shop is closed on the directions of the licencing authority. This Rule being plainly contrary to Section 20 of the Act has no legal validity and is therefore liable to be ignored. From these two provisions it is quite evident that whenever a licencee was disabled to run business for the reasons not attributable to him, he is entitled to remission of the proportionate fees.

In contrast to these provisions, in cases falling in Section 31(1) where excise licence is cancelled for violation of conditions of licence etc., by the licencee and Section 33 under which the licencee surrenders his licence, the licencee is not entitled to the refund of proportionate licence fees. The reason for this is not far to seek i.e., wherever the licencee is prevented from carrying on business on account of reasons not attributable to him, the statute provided for refund of proportionate licence fee for the unexpired portion of the licence period and in converse cases, such a facility is denied to them.

Though the provisions of the Act have not specifically envisaged a situation like the present one where, for no fault on the part of the successful bidder licence was not granted during a part of the excise year, in my considered view the analogy of and the principle underlying the provisions of Sections 20(3) and 32(2) of the Act equally applies to such a situation. Any contra stand would be in plain negation of Article 14 of the Constitution of India.

The averment that under Rule 25 the lease is valid for one year cannot be commended as correct because the said provision envisages that every lease shall ordinarily be valid for one year commencing with

1st July and ending with 30th June of succeeding year. The first proviso to the said rule provides that the lease granted after 1st July shall be valid up to the end of 30th June of the succeeding year and second proviso further provides that a lease granted for a part of the lease year shall be valid for such period as may be specified by the auctioning authority. This provision is thus flexible enough to enable the authorities to enter into a lease agreement even for a part of the excise year after 1st July. Section 2(m) of the Act defines lease period as the actual lease period in the lease year or part thereof. There was therefore absolutely no compulsion for the respondents to have entered into the lease agreement with the petitioner covering the whole of the excise year from 1.7.2005 while entering into agreement on 2.12.2005. Respondent No.3 was evidently oblivious of the correct Rule position while entering into the agreement and exhibited a pre-conceived approach that whenever a licence is granted, it should cover the entire excise year.

The averments that in the agreement entered into on 2.12.2005 the petitioner had undertaken to pay the entire lease amount of Rs.7,00,999/- and that he had executed a separate undertaking that he will not claim refund, do not dissuade me from holding that the action of the respondents in recovering the licence fee for the entire excise year is wholly arbitrary and unconscionable. A perusal of the counterpart agreement shows that it is a dotted-line agreement in which the blank columns were filled and at the marked portion, the petitioner signed. The Court can easily visualize the anxiety of the petitioner in simply signing the counterpart agreement at a stage when he was badly battered and bruised in his fight for just cause with the mighty State and the petitioner or for that matter anybody else in his place would have been in no position to resist signing such an agreement, lest, he would have been deprived of conducting the business even for the rest of the excise year which was fast coming to an end by 30.6.2006.

Similarly the alleged undertaking given by the petitioner is required to be considered in the same vein. It is not the case of the respondents

that either the Act or the Rules contemplate such an undertaking to be obtained from a licencee at the time of entering into the agreement and the act of the respondents in obtaining such an undertaking only exhibits their overzealous attitude and reinforces the view of the Court that the respondents have been wholly unfair to the petitioner. While the said undertaking falls wholly outside the purview of law governing the parties to the case, this document, does not enable the respondents to fasten any liability on the petitioner if he is not otherwise liable. In my considered view as the petitioner was unjustly prevented from commencing his business at the premises bearing Door No.1-198 on jejune grounds, he has no liability in law for payment of licence fee for the period from 1.7.2005 to 30.11.2005 when no licence was granted to him. This point is accordingly answered.

For the aforementioned reasons, the writ petition is allowed and the respondents are directed to refund to the petitioner the proportionate licence fee for the period from 1.7.2005 to 30.11.2005 within a period of four weeks. For dragging the petitioner into the needless litigation, respondents 1 and 3 shall pay the petitioner a sum of Rs.10,000/- (rupees ten thousand) towards costs which amount shall be paid alongwith the refundable licence fee.

Before parting with this case, I feel impelled to observe that the grant of licence to the petitioner is designedly delayed obviously to enrich the rival traders. Respondent No.1, in the light of the findings given in this judgment, is therefore directed to consider initiation of departmental action in order to fix up the responsibility on and take appropriate action against the erring officers, so that the public confidence in the executive apparatus of the State is not completely eroded. Respondent No.1 is given liberty to recover this amount of costs from the salaries of the officers who are ultimately found responsible.

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C.V.NAGARJUNA REDDY,J

Date: 26.11.2007

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[1] 2001 (6) ALT 240 (FB)
[2] AIR 1954 SC 220
[3] AIR 1957 SC 414
[4] AIR 1958 SC 398
[5] (1975) 1 SCC 737
[6] (1995) 1 SCC 574
[7] (1986) 4 SCC 566
[8] (2006) 4 SCC 327